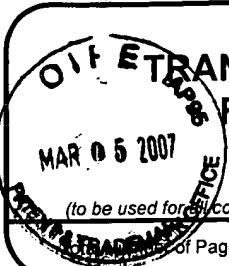


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	Application Number	10/734,671
	Filing Date	December 12, 2003
	First Named Inventor	FOERSTER
	Art Unit	3736
	Examiner Name	Anuradha Roy
	Attorney Docket Number	032,290-112

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input checked="" type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): COPIES of previously submitted IDSs, Sb08 forms, and Amendment and Response Receipt verification postcard
<div style="border: 1px solid black; padding: 5px; min-height: 100px;"> Remarks </div>		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	O'MELVENY & MYERS LLP		
Signature	<i>Diane K. Wong</i>		
Printed name	Diane K. Wong		
Date	February 27, 2007	Reg. No.	54,550

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Signature	<i>Cynthia B. Pacheco</i>		
Typed or printed name	Cynthia B. Pacheco	Date	February 27, 2007



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

FOERSTER et al.

Serial No.: 10/734,671

Filed: December 12, 2003

**For: METHODS AND DEVICES FOR
DEFINING AND MARKING TISSUE**

Group Art Unit: 3736

Examiner: Roy Anuradha

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SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with 37 CFR §§ 1.97 and 1.98, the items identified in this Information Disclosure Statement ("IDS") are brought to the attention of the Office. The items are listed on the attached form PTO-SB/08.

The items identified in this IDS may or may not be "material" pursuant to 37 CFR § 1.56. The submission thereof by Applicant is not to be construed as an admission that any such patent, publication or other information referred to therein is material or considered to be material (37 CFR § 1.97(h)), or even qualifies as "prior art" under 35 USC § 102 with respect to this invention unless specifically designated by Applicant as such.

INFORMATION DISCLOSURE STATEMENT FILING PROVISION:

☐ This IDS is believed to be timely in that it is being submitted under 37 CFR § 1.97(b), that is (1) within three months of the filing date of the application, which is not a continued prosecution application filed under § 1.53(d); or (2) within three months of entry of the national stage as set forth in 37 CFR § 1.491; or (3) before the mailing of a first Office action on the merits; or (4) before the

09/05/2006 H&UTEMAI 00000024 502862 10734671

01 FC:1806

180.00 DA

CERTIFICATE OF MAILING (37 C.F.R. §1.8a)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

August 29, 2006
Date of Deposit
NB1:693727.1

Cynthia B. Pacheco
Cynthia B. Pacheco

mailing of a first Office action after filing a request for continued examination under § 1.114. Thus, no fee is required.

- ☐ However, if the undersigned is in error in this regard, Applicant respectfully requests that the Office consider this IDS as filed under 37 CFR § 1.97(c), if applicable, and charge the fee due under 37 CFR § 1.17(p) to the deposit account referenced below.
- ☐ However, if the undersigned is in error in this regard, Applicant respectfully requests that the Office consider this IDS as filed under 37 CFR § 1.97(c), if applicable, and a statement under 37 CFR § 1.97(e) is included below, thus no fee is required.
- ☒ This IDS is being submitted under 37 CFR § 1.97(c), that is after mailing of a first Office action on the merits, but before a Final Action under 37 CFR § 1.113 or a Notice of Allowance under 37 CFR § 1.311.
- ☒ The fee due under 37 CFR § 1.17(p) is submitted herewith.
- ☐ A statement under 37 CFR § 1.97(e) is included below, thus no fee is required. In the event that this IDS is not received before a Final Action or a Notice of Allowance, then Applicant respectfully requests that the Office consider the filing of these papers to be submitted under 37 CFR § 1.97(d) and charge the fee due under 37 CFR § 1.17(p) to the deposit account below.
- ☐ This IDS is being submitted under 37 CFR § 1.97(d), that is after a Final Action under 37 CFR § 1.113 or a Notice of Allowance under 37 CFR § 1.311, but before payment of the issue fee. A statement under 37 CFR § 1.97(e) is included below. The fee due under 37 CFR § 1.17(p) is submitted herewith.

Statement Under 37 CFR § 1.97(e):

- ☐ Each item contained in this IDS was first cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this IDS.
- ☐ No item contained in this IDS was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing this statement after making reasonable inquiry, no item of information contained in this IDS was known to any individual designated in 37 CFR § 1.56(c) more than three months prior to the filing of this IDS.

PAYMENT AND/OR AUTHORIZATION TO CHARGE FEES:

- ☐ A check in the amount of \$180.00 is enclosed for the above fee(s).
☒ Please charge \$180.00 to Deposit Account No. **50-2862** for the above fee(s).

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The Commissioner is authorized to charge any fees required by the filing of these papers, and to credit any overpayment to O'Melveny and Myers' Deposit Account No. **50-2862**.

Respectfully submitted,

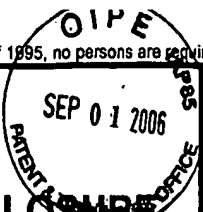
O'MELVENY & MYERS LLP

Dated: August 23, 2006

By: Diane K. Wong
Diane K. Wong
Reg. No. 54,550
Attorneys for Applicant

DKW

O'MELVENY & MYERS LLP
610 Newport Center Drive, 17th Floor
Newport Beach, CA 92660-6429
(949) 760-9600



Substitute for form 1449A-PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Complete if Known

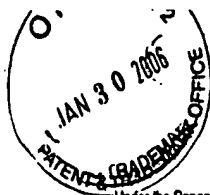
Sheet	1	of	1	Application No.	10/734,671
				Filing Date	December 12, 2003
				First Named Inventor	FOERSTER
				Art Unit	3736
				Examiner Name	Roy Anuradha
				Attorney Docket No.	032,290-112

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U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	Document No.	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number-Kind Code ² (if known)			
	1.	US-5,411,520	05/1995	Nash	
	2.	US-5,102,983	04/1992	Kennedy	
	3.	US-4,007,732	02/1977	Kvavle	

Examiner Signature	Date Considered	
<p>*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. 1 Applicant's unique citation designation number (optional). 2 See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. 3 Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). 4 For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. 5 Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. 6 Applicant is to place a check mark here if English language Translation is attached.</p> <p>This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.</p>		
NBI:693733.1		PTO/SB-08a (08 03) American LegalNet Inc. www.USCourtForms.com



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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(use as many sheets as necessary)

Sheet 1 of 5

Application Number	10/734,871
Filing Date	December 12, 2003
First Named Inventor	Seth A. Foerster, et al.
Group Art Unit	Not Assigned
Examiner Name	Not Assigned
Attorney Docket Number	END-897 DIV 2

U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear
		Number	Kind Code ² (if known)			
		4,248,214		Hannah, et al.	02-03-1981	ALL
		4,541,438		Parker, et al.	09-17-1985	ALL
		4,592,356		Gutierrez	06-03-1986	ALL
		4,774,948		Markham	10-04-1988	ALL
		4,799,495		Hawkins, et al.	01-24-1989	ALL
		4,813,422		Fisher, et al.	03-21-1989	ALL
		4,817,622		Pennypacker, et al.	04-04-1989	ALL
		4,852,568		Kensey	08-01-1989	ALL
		4,966,583		Debbas	10-30-1990	ALL
		4,986,279		O'Neill	01-22-1991	ALL
		5,014,713		Roper, et al.	05-14-1991	ALL
		5,018,530		Rank, et al.	05-28-1991	ALL

FOREIGN PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	Foreign Patent Document			Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear	T ³
		Office ³	Number ⁴	Kind Code ⁵				
		EP	0 894 503	A2	Stinson	08-06-1998	ALL	
		PCT	00/38579	A2	Sirimanne, et al.	12-23-1999	ALL	

Examiner Signature		Date Considered	
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¹ Unique citation designation number. ² See attached Kinds of U.S. Patent Documents. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁴ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁵ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. ⁶ Applicant is to place a check mark here if English language Translation is attached.

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**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**

(use as many sheets as necessary)

Sheet 2 of 5

Application Number	10/734,871
Filing Date	December 12, 2003
First Named Inventor	Seth A. Foerster, et al.
Group Art Unit	Not Assigned
Examiner Name	Not Assigned
Attorney Docket Number	END-897 DIV 2

U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear
		Number	Kind Code ² (if known)			
		5,080,655		Haaga	01-14-1992	ALL
		5,083,570		Mosby	01-28-1992	ALL
		5,158,084		Ghiatas	10-27-1992	ALL
		5,195,988		Haaga	03-23-1993	ALL
		5,197,482		Rank, et al.	03-30-1993	ALL
		5,221,269		Miller, et al.	06-22-1993	ALL
		5,325,857		Nabai, et al.	07-05-1994	ALL
		5,334,216		Vidal, et al.	08-02-1994	ALL
		5,353,804		Kornberg, et al.	10-11-1994	ALL
		5,388,588		Nabai, et al.	02-14-1995	ALL
		5,394,886		Nabai, et al.	03-07-1995	ALL
		5,409,004		Sloan	04-25-1995	ALL

FOREIGN PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	Foreign Patent Document			Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear	T ⁵
		Office ³	Number ⁴	Kind Code ²				

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¹ Unique citation designation number. ² See attached Kinds of U.S. Patent Documents. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁴ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁵ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. ⁶ Applicant is to place a check mark here if English language Translation is attached.

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Substitute for form 1449A/PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (use as many sheets as necessary) Sheet 3 of 5	Application Number	10/734,671
	Filing Date	December 12, 2003
	First Named Inventor	Seth A. Foerster, et al.
	Group Art Unit	Not Assigned
	Examiner Name	Not Assigned
	Attorney Docket Number	END-897 DIV 2

U.S. PATENT DOCUMENTS

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		Number	Kind Code ² (if known)			
		5,423,321		Fontenot	06-13-1995	ALL
		5,467,780		Nabai, et al.	11-21-1995	ALL
		5,479,936		Nabai, et al.	01-02-1996	ALL
		5,483,972		Nabai, et al.	01-16-1996	ALL
		5,487,392		Haaga	01-30-1996	ALL
		5,517,997		Fontenot	05-21-1996	ALL
		5,526,822		Burbank, et al.	06-18-1996	ALL
		5,556,410		Mittermeir, et al.	09-17-1996	ALL
		5,571,182		Ersek, et al.	11-05-1996	ALL
		5,647,374		Cutrer	07-15-1997	ALL
		5,660,185		Shmulewitz, et al.	08-26-1997	ALL
		5,795,308		Russin	08-18-1998	ALL

FOREIGN PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	Foreign Patent Document			Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear	T ⁶
		Office ³	Number ⁴	Kind Code ⁵				

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Substitute for form 1448A/PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (use as many sheets as necessary) Sheet 4 of 5	Application Number	10/734,671
	Filing Date	December 12, 2003
	First Named Inventor	Seth A. Foerster, et al.
	Group Art Unit	Not Assigned
	Examiner Name	Not Assigned
	Attorney Docket Number	END-897 DIV 2

U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear
		Number	Kind Code ² (if known)			
		5,807,276		Russin	09-15-1998	ALL
		5,873,904		Ragheb, et al.	02-23-1999	ALL
		5,980,564		Stinson	11-09-1999	ALL
		6,053,876		Fisher	04-25-2000	ALL
		6,161,034		Burbank, et al.	12-12-2000	ALL
		6,183,497	B1	Sing, et al.	02-06-2001	ALL
		6,228,055	B1	Foerster, et al.	05-08-2001	ALL
		6,231,834	B1	Unger, et al.	05-15-2001	ALL
		6,271,278	B1	Park, et al.	08-07-2001	ALL
		6,335,028	B1	Vogel, et al.	01-01-2002	ALL
		6,356,782	B1	Sirimanne, et al.	03-12-2002	ALL

FOREIGN PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	Foreign Patent Document			Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear	T ⁴
		Office ³	Number ⁴	Kind Code ⁵				

Examiner Signature	Date Considered
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

Sheet 5 of 5

Application Number	10/734,671
Filing Date	December 12, 2003
First Named Inventor	Seth A. Foerster, et al.
Group Art Unit	Not Assigned
Examiner Name	Not Assigned
Attorney Docket Number	END-897 DIV 2

[illegible]

Examiner Signature		Date Considered	
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1 Unique citation designation number. 2 Applicant is to place a check mark here if English language Translation is attached.

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Substitute for form 1449A/PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (use as many sheets as necessary)	Application Number	10/734,671
	Filing Date	December 12, 2003
	First Named Inventor	Seth A. Foerster et al.
	Group Art Unit	Not Assigned
	Examiner Name	Not Assigned
	Attorney Docket Number	END-897 DIV2

Sheet 1 of 3

U.S. PATENT DOCUMENTS

Examiner Initials	Cite No.	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear
		Kind Code	Number (if known)			
		Re.	35,391	Brauman	12-03-1996	ALL
			3,194,239	Sullivan	01-16-1963	ALL
			4,298,998	Naficy	11-10-1981	ALL
			4,347,234	Wahlig et al.	08-31-1982	ALL
			4,365,572	Gullemin et al.	11-02-1982	ALL
			4,511,653	Play et al.	04-16-1985	ALL
			4,703,108	Silver et al.	10/27/1987	ALL
			5,061,281	Mares et al.	10-29-1991	ALL
			5,085,629	Golberg et al.	02-04-1992	ALL
			5,120,802	Mares et al.	06-09-1992	ALL
			5,127,916	Spencer et al.	07-07-1992	ALL
			5,192,300	Fowler	03-19-1993	ALL
			5,195,988	Haaga	03-23-1993	ALL
			5,274,074	Tang et al.	12-28-1993	ALL
			5,433,751	Christel et al.	07-18-1995	ALL
			5,470,308	Edwards et al.	11-28-1995	ALL
			5,514,379	Weissleder et al.	05-07-1996	ALL
			5,522,896	Prescott	06-04-1996	ALL
			5,824,081	Knapp et al.	10-20-1998	ALL
			5,869,080	McGregor et al.	02-09-1999	ALL
			5,922,024	Janzen et al.	07-13-1999	ALL
			6,066,325	Wallace et al.	05-23-2000	ALL
			6,214,045	B1 Corbitt, Jr. et al.	04-10-2001	ALL
			2004/0024304	A1 Foerster et al.	02-05-2004	ALL
			2001/0034528	A1 Foerster et al.	10-25-2001	ALL
Examiner Signature				Date Considered		

COPY

COPY

PTO/SB/08A (08-00)

Approved for use through 10/31/2002. OMB 0631-0031

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Substitute for form 1449A/PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (use as many sheets as necessary)	Application Number	10/734,671
	Filing Date	December 12, 2003
	First Named Inventor	Seth A. Foerster et al.
	Group Art Unit	Not Assigned
	Examiner Name	Not Assigned
	Attorney Docket Number	END -897 DIV2

Sheet 2 of 3

OTHER PRIOR ART - NON PATENT LITERATURE DOCUMENTS			
Examiner's Initials*	Cite No.	Include name of the author (in CAPITOL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T ²
		WANG HOM-LAY et al. "Evaluation of an Absorbable Collagen Membrane in Treating Class II Furcation Defects", pp 1029-1036. November 1994.	
		BROPHY M. REGINA et al. "Biodegradable Polyester Polymers as Drug Carriers". Pp 1-25.	
		SWARBRICK JAMES and BOYLAN JAMES. "Bioabsorbable Polymers." <u>The Encyclopedia of Pharmaceutical Technology</u> . Vol. 1. Absorption of Drugs to Bioavailability of Drugs and Bioequivalence. New York and Basel. Pp 465-476.	
		PARK, KINAM; SHALABY, WALEED AND PARK HAESUN. "Biodegradable Hydrogels for Drug Delivery." <u>Purdue University School of Pharmacy</u> . Pp. 13-19.	
		TSCHAKALOFF A. et al. "Degradation Kinetics of Biodegradable Implants depending on the site of implantation." <u>Int. Journal of Oral & Maxillofacial Surgery</u> . 1994. Pp. 443-445.	
		VERT, MICHEL. MAUDUIT, JACQUES AND LI, SUMING. "Biodegradation of PLA/GA Polymers increasing complexity." <u>Biomaterials</u> 1994 Vol. 15. No. 15. Pp. 1209-1213.	
		HOFFMAN, G.O. "Biodegradable Implants in Traumatology A Review on the State-of-the Art." <u>Arch Cathop Trauma Surg</u> . 1995 Pp. 114: 123-132.	
		BOSTMAN, O. AND PIHLAJAMAKI, H. "Clinical Biocompatibility of Biodegradable Orthopaedic Implants for Internal Fixation." <u>Biomaterials</u> 21 (2000) Pp. 2615-2621.	
		ALONSO, MARIA J., GUPTA, RAJESH K. et al. "Biodegradable Microspheres as Controlled-Release Tetanus Toxoid Delivery Systems." <u>Vaccine</u> 1994 Vol. 12 No. 4. Pp. 299-304.	
		AN, YUEHUEI H., WOOLF, SHANE K., FRIEDMAN, RICHARD. "Pre-clinical in Vivo Evaluation of Orthopaedic Bioabsorbable Devices." <u>Biomaterials</u> 21 (2000) Pp. 2635-2652.	
		MOONEY, D.J. et al. "Transplantation of Hepatocytes Using Porous, Biodegradable Sponges." <u>Transplantation Proceedings</u> , Vol. 26, No. 6 Dec. 1994 Pp 3425-3426.	
		CUTRIGHT, DUANE E. et al. "Degradation Rates of Polymers and Copolymers of Polylactic and Polyglycolic Acids." <u>U.S. Army Institute of Dental Research, Walter Reed Army Medical Center, Washington, D. C.</u> Pp. 142-151	
		KULKARNI, R. K. PHD. Et al.; "Polylactic Acid for Surgical Implants." <u>Arch Surgery</u> . Vol. 93, Nov. 1966 Pp. 839-843.	
		KULKARNI, R. K. PHD. Et al.; "Biodegradable Poly(lactic acid) Polymers." <u>U.S. Army Institute of Dental Research, Walter Reed Army Medical Center, Washington, D. C.</u> (1971) Vol. 5, Pp. 169-181	
		CHASIN, MARK AND LANGER, ROBERT. - LEWIS, DANNY H. "Biodegradable Polymers as Drug Delivery Systems." <u>Controlled Release of Bioactive Agents from Lactide/Glycolide Polymers Ch. 1</u> Pp -41 (1990). And BOGDANSKY, SIMON "Natural Polymers as Drug Delivery Systems." Pp. 231-259.	
		HUANG, SAMUEL J. et al.; "Hydrophilic-Hydrophobic Biodegradable Polymers: Release characteristics of Hydrogen-Bonded, Ring-Containing Polymer Matrices. (1994) <u>Biomaterials</u> (1994, Vol. 15 No. 15 Pp. 1243-1247.	
		BECKER, PAUL L. "Comparison of Antibiotic Release from Polymethylmethacrylate Beads and Sponge Collagen." <u>Journal of Orthopaedic Research</u> . (1994) Vol. 12, No. 5.	
		MACKINNON, SUSAN E. "Clinical Nerve Reconstruction with a Bioabsorbable Polyglycolic Acid Tube." <u>Plastic and Reconstructive Surgery</u> , March 1990.	
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		MATSUSUE, YOSHITAKA, et al.; "In Vitro and In Vivo Studies on Bioabsorbable Ultra-High-Strength Poly (L-Lactide) Rods." <u>Journal of Biomedical Materials Research</u> (1992) Vol. 26, Pp. 1553-1567.	
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Examiner Signature		Date Considered	

COPY

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PTO/SB/08A (08-00)

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U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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Substitute for form 1449A/PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (use as many sheets as necessary)	Application Number	10/734,671
	Filing Date	December 12, 2003
	First Named Inventor	Seth A. Foerster et al.
	Group Art Unit	Not Assigned
	Examiner Name	Not Assigned
	Attorney Docket Number	END -897 DIV2

Sheet 3 of 3

OTHER PRIOR ART - NON PATENT LITERATURE DOCUMENTS			
Examiner's Initials*	Cite No. ¹	Include name of the author (in CAPITOL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T ²
		PARK, KINAM et al.; "Biodegradable Hydrogels for Drug Delivery." Purdue University, School of Pharmacy. Pp. 2-28	
		CHU, C.C. and DUMITRIU, SEVERIAN Polymeric Biomaterials 2 nd ed. "Biodegradable Biomaterials Having Nitric Oxide Biological Activity." Ch. 5. Pp 123-124. and ROKKANEN, PENTTI U. "Bioabsorbable Polymers for Medical Applications with an Emphasis on Orthopedic Surgery." Ch. 20 Pp. 545-547.	
		MIDDLETON, John C. and TIPTON, ARTHUR.; "Synthetic Biodegradable Polymers as Medical Devices." (March 1998) Pp. 1-14 of website: http://www.deviceink.com/mpb/archive/98/03/002.html . 08-28-2002.	
		TSURUTA, TEIJI ; KIMURA, YOSHIBARU Et al. "Biomedical Applications of Polymeric Materials." 1993 Pp. 164-186.	
		PARKER, STEVE H. and KLAUS, ANITA J. "Performing a Breast Biopsy with A Directional, Vacuum-Assisted Biopsy Instrument." From the RSNA Refresher Courses- Continuing Education (1997) Vol. 17 No. 5 pp. 1233-1252.	
		LEONARD, CHARLES MD. Et al. "Use of Ultrasound to Guide Radiation Boost Planning Following Lumpectomy for Carcinoma of The Breast." (Aug. 1993) International Radiation Oncology Biology. Phys. Vol. 27. pp. 1193-1197	
Examiner Signature		Date Considered	

COPY



Patent
Attorney Docket: 032,290-112
(formerly END 897DIV2)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

S. Foerster et al.

Serial No.: 10/734,671

Filed: December 12, 2003

**For: METHODS AND DEVICES FOR
DEFINING AND MARKING TISSUE**

Group Art Unit: 3736

Examiner: Anuradha Roy

COPY

AMENDMENT AND RESPONSE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Office Action dated October 25, 2005, please amend the subject application as follows.

Amendments to the Specification begin on page 2 of this paper.

Listing of the Claims begin on page 3 of this paper.

Remarks begin on page 5 of this paper.

CERTIFICATE OF MAILING (37 C.F.R. §1.8a)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450.

January 25, 2006
Date of Deposit
NB1:673964.1

Cynthia B. Pacheco
Cynthia B. Pacheco

AMENDMENTS TO THE SPECIFICATION

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Please replace the following paragraph before the first line of the specification that was added by preliminary amendment on December 12, 2003.

-- This ~~divisional application claims priority to US Patent Application~~ is a continuation of U.S. Application Serial Number 10/213,638, filed August 7, 2002, which claims priority to US Application is a continuation of U.S. Application Serial No. 09/954,646, filed Sept. September 18, 2001, which is a continuation of US Application U.S. Application Serial No. 09/776,125, filed February 2, 2001, which is a continuation of US Application U.S. Application Serial No. 08/858,389, filed May 19, 1997, now U.S. Patent No. 6,228,055, which is a continuation of US Application U.S. Application Serial No. 08/308,097, filed September 16, 1994, now abandoned. --

LISTING OF THE CLAIMS

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This listing of claims will replace all prior versions, and listings, of claims in the application:

1-45. (Canceled)

46. (Previously Presented) A ready to use assembly for delivering a biopsy marker mass, comprising a tube, said tube having an inner lumen and being configured to be received by a biopsy guide cannula, a quantity of ultrasound-detectable bio-resorbable powder disposed within the inner lumen of said tube.

47. (Previously Presented) The assembly of claim 46 comprising a radiopaque material disposed within said tube which comprises a marker formed in a recognizable shape not naturally found within a patient's body.

48. (Previously Presented) A system for marking a biopsy site within a patient, comprising:

a delivery tube having a bore with a proximal portion and a distal portion, a plunger slidably disposed within said bore proximal portion, and a discharge end on said distal portion; and

a quantity of ultrasound detectable bioresorbable powder disposed within said bore distal portion.

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49. (Previously Presented) A delivery system for delivering marker material to a target site within a patient, comprising:
- an elongate member having a distal end, a discharge port in the distal end and an inner lumen extending therein to and in fluid communication with the discharge port in the distal end;
 - a mass of solid particulate marker material disposed within the inner lumen; and
 - an ejector which is advancable with and coupled to said elongate member and which is configured to eject particulate marker material from the discharge port in said distal end of said elongate member.

REMARKS

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Reconsideration of the rejections set forth in the Office Action mailed October 25, 2005, is respectfully requested. Claims 46-49 remain pending in this application.

Claim of Priority

Applicants have amended the priority claim to reflect that the current application is a continuation application of 10/213,638 rather than a divisional. A petition under 37 C.F.R. § 1.78(a)(3) for acceptance of claim of priority and a request for corrected filing receipt have also been filed herewith.

35 U.S.C. § 102

Claims 46-49 were rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Fisher (USP 6,350,244). Applicants respectfully argue that Fisher does not qualify as a prior art reference to the instant application, which claims priority to U.S. Application Serial No. 08/308,097, filed September 16, 1994. In contrast, the earliest priority date that Fisher is entitled to is February 21, 2000. Because the priority application predates Fisher, Fisher is not prior art, and the rejection over Fisher should be withdrawn.

Information Disclosure Statement

Applicants noted that the non-patent literature references listed on the Forms PTO/SB/08A that were returned with the Office Action mailed October 25, 2005, were crossed out and not initialed. Although no explanation was provided for excluding these references, Applicants have

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provided copies of all of the non-patent references and copies of previously submitted Forms

PTO/SB/08A and respectfully requests consideration of these references that were previously submitted.

For all the foregoing reasons, Applicant asserts the claims are in condition for allowance. Favorable action on the merits of the claims is therefore earnestly solicited. If any issues remain, please contact Applicant's undersigned representative at (949) 760-9600. The Commissioner is hereby authorized to charge any additional fees that may be required to Deposit Account No. 50-2862.

Respectfully submitted,
O'MELVENY & MYERS LLP

Dated: January 25, 2006

By: Diane K. Wong
Diane K. Wong
Reg. No. 54,550
Attorneys for Applicants

JCK/DKW/cp

O'Melveny & Myers LLP
610 Newport Center Drive, 17th Floor
Newport Beach, CA 92660-6429
(949) 760-9600



Patent
Attorney Docket No. 032,290-112

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

COPY

In re the Application of:

FOERSTER

Serial No.: 10/734,671

Filed: December 12, 2003

For: METHODS AND DEVICE FOR
DEFINING AND MARKING TISSUE

Group Art Unit: 3736

Examiner: Anuradha Roy

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

03/10/2006 CREGA1 00000027 502862 10734671
01 FC:1806 180.00 \$

Sir:

In accordance with 37 CFR §§ 1.97 and 1.98, the items identified in this Information Disclosure Statement ("IDS") are brought to the attention of the Office. The items are listed on the attached form PTO-SB/08a and PTO-SB/08b. In accordance with §1.98(d), copies of some or all of the references listed on the attached Form PTO-1449 are not enclosed herewith because they were previously cited by or submitted to the Patent and Trademark Office in one or more of the prior U.S. Applications: U.S. Application No. 08/308,097, filed on September 16, 1994, now abandoned; U.S. Application No. 08/858,389 filed on May 19, 1997, issued as U.S. Patent No. 6,228,055; U.S. Application No. 09/776,125, filed on February 2, 2001; U.S. Application No. 09/954,646, filed September 18, 2001; U.S. Application No. 10/213,638, filed August 7, 2002; U.S. Application No. 10/630,883, filed on July 30, 2003; U.S. Application No. 10/966,551, filed on October 15, 2004; and U.S. Application No. 11/282,285, filed on November 18, 2005.

The items identified in this IDS may or may not be "material" pursuant to 37 CFR § 1.56. The submission thereof by Applicant is not to be construed as an admission that any such patent, publication or other information referred to therein is material or considered to be material (37 CFR

CERTIFICATE OF MAILING (37 C.F.R. §1.8)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class mail in an envelope addressed to the Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450.

March 7, 2006
Date of Deposit
NB1:678249.1

Cynthia B. Pacheco
Cynthia B. Pacheco

§ 1.97(h)), or even qualifies as "prior art" under 35 USC § 102 with respect to this invention unless specifically designated by Applicant as such.

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INFORMATION DISCLOSURE STATEMENT FILING PROVISION:

☐ This IDS is believed to be timely in that it is being submitted under 37 CFR § 1.97(b), that is (1) within three months of the filing date of the application, which is not a continued prosecution application filed under § 1.53(d); or (2) within three months of entry of the national stage as set forth in 37 CFR § 1.491; or (3) before the mailing of a first Office action on the merits; or (4) before the mailing of a first Office action after filing a request for continued examination under § 1.114. Thus, no fee is required.

☐ However, if the undersigned is in error in this regard, Applicant respectfully requests that the Office consider this IDS as filed under 37 CFR § 1.97(c), if applicable, and charge the fee due under 37 CFR § 1.17(p) to the deposit account referenced below.

☐ However, if the undersigned is in error in this regard, Applicant respectfully requests that the Office consider this IDS as filed under 37 CFR § 1.97(c), if applicable, and a statement under 37 CFR § 1.97(e) is included below, thus no fee is required.

☒ This IDS is being submitted under 37 CFR § 1.97(c), that is after mailing of a first Office action on the merits, but before a Final Action under 37 CFR § 1.113 or a Notice of Allowance under 37 CFR § 1.311.

☒ The fee due under 37 CFR § 1.17(p) is submitted herewith.

☐ A statement under 37 CFR § 1.97(e) is included below, thus no fee is required. In the event that this IDS is not received before a Final Action or a Notice of Allowance, then Applicant respectfully requests that the Office consider the filing of these papers to be submitted under 37 CFR § 1.97(d) and charge the fee due under 37 CFR § 1.17(p) to the deposit account below.

☐ This IDS is being submitted under 37 CFR § 1.97(d), that is after a Final Action under 37 CFR § 1.113 or a Notice of Allowance under 37 CFR § 1.311, but before payment of the issue fee. A statement under 37 CFR § 1.97(e) is included below. The fee due under 37 CFR § 1.17(p) is submitted herewith.

Statement Under 37 CFR § 1.97(e):

☐ Each item contained in this IDS was first cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this IDS.

☐ No item contained in this IDS was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing this statement after

making reasonable inquiry, no item of information contained in this IDS was known to any individual designated in 37 CFR § 1.56(c) more than three months prior to the filing of this IDS.

COPY

Some references are in a language other than the English language. A concise explanation of relevance is given below.

DE 935625

This reference discloses a biopsy instrument and method for acquiring subcutaneous biopsies and for removing lesions.

DE 4330958

The invention relates to novel microparticles containing active compound, which, additionally to the active compound(s), contain at least one gas or gaseous phase, media (microparticulate systems) containing these particles, their use for the ultrasonically controlled in vivo release of active compound and process for the production of the particles and media.

DE 4403789

The invention relates to the use of coloured NMR, X-ray or possibly dye-containing ultrasonic-image-producing substances for marking bodily tissues.

FR 2714284

The prosthesis consists of a circular component made from a supple material with a shape memory effect, able to occupy three different positions. In the first position (2) it is extended lengthwise to form a small cylinder which can be introduced through a catheter, with its proximal end closed by a valve (4). In a second position the two compartments (8,10) are inflated separately so that they are deployed on opposite sides of the ruptured wall, while in the third position the compartments are squeezed together to form a double patch on the wall. The prosthesis has a radio-opaque marker (6) between the two compartments which allows its progress through the patient's body to be monitored.

PAYMENT AND/OR AUTHORIZATION TO CHARGE FEES:

COPY

- ☐ A check in the amount of \$180.00 is enclosed for the above fee(s).
☒ Please charge \$180.00 to Deposit Account No. **50-2862** for the above fee(s).

The Commissioner is authorized to charge any fees required by the filing of these papers, and to credit any overpayment to O'Melveny and Myers' Deposit Account No. **50-2862**.

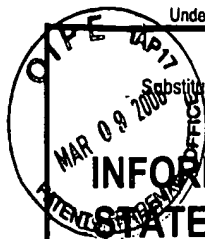
Respectfully submitted,

O'MELVENY & MYERS LLP

Dated: March 7, 2006

By: *Diane K Wong*
Diane Wong
Reg. No. 54,550
Attorneys for Applicant

DKW/
O'MELVENY & MYERS LLP
610 Newport Center Drive, 17th Floor
Newport Beach, CA 92660-6429
(949) 760-9600



Substitute for form 1449A-PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Complete If Known

Application No.	10/734,671
Filing Date	December 12, 2003
First Named Inventor	FOERSTER
Art Unit	3736
Examiner Name	Anuradha Roy
Attorney Docket No.	032,290-112

Sheet 1 of 3

U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	Document No.	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number-Kind Code ² (if known)			
	1.	US 2,609,347	09/1952	Wilson	
	2.	US 2,653,917	09/1953	Hammon	
	3.	US 2,659,935	11/1953	Hammon	
	4.	US 2,664,366	12/1953	Wilson	
	5.	US 2,664,367	12/1953	Wilson	
	6.	US 2,846,407	08/1958	Wilson	
	7.	US 3,001,522	09/1961	Silverman	
	8.	US 3,823,212	07/1974	Chvapil	
	9.	US 4,230,123	10/1980	Hawkins	
	10.	US 4,320,201	03/1982	Berg	
	11.	US 4,356,572	11/1982	Guillemin	
	12.	US 4,744,364	05/1988	Kensey	
	13.	US 4,789,401	12/1988	Ebinger	
	14.	US 4,790,329	12/1988	Morris	
	15.	US 4,832,686	05/1989	Anderson	
	16.	US 4,970,298	11/1990	Silver	
	17.	US 5,148,813	09/1992	Bucalo	
	18.	US 5,158,565	10/1992	Marcadis	
	19.	US 5,204,382	04/1993	Wallace	
	20.	US 5,207,705	05/1993	Trudell	
	21.	US 5,326,350	07/1994	Li	
	22.	US 5,395,319	03/1995	Hirsch	
	23.	US 5,411,522	05/1995	Trott	
	24.	US 5,445,167	08/1995	Yoon	
	25.	US 5,469,854	11/1995	Unger	
	26.	US 5,507,813	04/1996	Dowd	

Examiner
SignatureDate
Considered

*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. 1 Applicant's unique citation designation number (optional). 2 See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. 3 Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). 4 For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. 5 Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. 6 Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

NBI:678236.1

PTO/SB-08a (08 03)

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Substitute for form 1449A-PTO <h2 style="text-align: center;">INFORMATION DISCLOSURE STATEMENT BY APPLICANT</h2> <p style="text-align: center;">(Use as many sheets as necessary)</p>		Complete if Known	
		Application No.	10/734,671
		Filing Date	December 12, 2003
		First Named Inventor	FOERSTER
		Art Unit	3736
		Examiner Name	Anuradha Roy
Sheet	2	of	3
		Attorney Docket No.	032,290-112

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U.S. PATENT DOCUMENTS					
Examiner Initials	Cite No. ¹	Document No.	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number-Kind Code ² (if known)			
	27.	US 5,645,566	07/1997	Brenneman	
	28.	US 5,670,161	09/1997	Healy	
	29.	US 5,676,146 (B1)	04/2000	Scarborough	
	30.	US 5,716,404	02/1998	Vicante	
	31.	US 5,752,974	05/1998	Rhee	
	32.	US 5,902,310	05/1999	Foerster	
	33.	US 5,941,910	08/1999	Schindler	
	34.	US 6,053,925	04/2000	Barnhart	
	35.	US 6,083,522	07/2000	Chu	
	36.	US 6,162,192	12/2000	Cragg	
	37.	US 6,174,330 B1	01/2001	Stinson	
	38.	US 6,371,904	04/2002	Sirimanne	

FOREIGN PATENT DOCUMENTS						
Examiner Initials*	Cite No. ¹	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	† ⁶
		Country Code ³ Number ⁴ Kind Code (if known)				
	39.	DE 0935625	11/1955			
	40.	DE 4330958	03/1995			
	41.	DE 4403789	08/1995			
	42.	EP 0255123	02/1988			
	43.	EP 0534696	03/1993			
	44.	EP 0769281	04/1997			
	45.	FR 2714284	06/1995			
	46.	WO 9608208	03/1996			
	47.	WO 9847430	10/1998			

Examiner Signature		Date Considered
<p><small>*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. 1 Applicant's unique citation designation number (optional). 2 See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. 3 Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). 4 For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. 5 Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. 6 Applicant is to place a check mark here if English language Translation is attached.</small></p> <p><small>This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.</small></p>		
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Substitute for form 1449A-PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Use as many sheets as necessary)		Complete If Known			
		Application No.	10/734,671		
		Filing Date	December 12, 2003		
		First Named Inventor	FOERSTER		
		Art Unit	3736		
		Examiner Name	Anuradha Roy		
Sheet	3	of	3	Attorney Docket No.	032,290-112

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NON PATENT LITERATURE DOCUMENTS			
Examiner Initials*	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s) volume-issue number(s), publisher, city and/or country where published	T ²
	48.	CLARKSON, P.: "Sponge Implants for Flat Breasts," Proceedings of the Royal Society of Medicine, Vol. 53 at 880-881 (1960)	
	49.	DUFRANE, P. et al: "Prebiopsy Localization of Non-Palpable Breast Cancer," Journal Belgede Radiologie (October 1, 1990) Vol. 73, No. 5	
	50.	EPO Search Report dated December 5, 2003 for EPO Application number EP 03 07 5084	
	51.	FOURNIER et al: "Experimental Studies and Preliminary Clinical Trial of Vinorelbine-loaded Polymeric Bioresorbable Implants for the Local Treatment of Solid Tumors", Cancer Research 51, pp. 5384-5391, October 1, 1991	
	52.	PANGMAN, W.J. and WALLACE, R.M.: "The Use of Plastic Prosthesis in Breast Plastic and Other Soft Tissue Surgery," The Western Journal of Surgery, Obstetrics and Gynecology at 508 (August 1955)	

Examiner Signature	Date Considered	
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Docket No. END 897 DIV2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Seth A. Foerster et al.

Serial No. :

Art Unit:

Filed : December 12, 2003

Examiner:

For : METHODS AND DEVICES FOR DEFINING
AND MARKING TISSUE

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Commissioner for Patents
MS Patent Application
PO Box 1450
Alexandria, VA 22313-1450

INFORMATION DISCLOSURE STATEMENT

Dear Sir:

Pursuant to 37 C.F.R. §1.56 and in accordance with 37 C.F.R. §§1.97-1.98, information relating to the above-identified application is hereby disclosed. Inclusion of information in this statement is not to be construed as an admission that this information is material as that term is defined in 37 C.F.R. §1.56(b).

Applicant(s) reserve(s) the right to establish the patentability of the claimed invention over any of the information provided herewith, and/or to prove that this information may not be prior art, and/or to prove that this information may not be enabling for the teachings purportedly offered.

This statement should not be construed as a representation that a search has been made, or that information more material to the examination of the present patent application does not exist.

[X] In accordance with §1.97(b), since this Information Disclosure Statement is being filed either within three months of the filing date of the above-identified national application (other than a continued prosecution application under §1.53(d)), within three months of the date of entry into the national stage of the above identified application as set forth in §1.491, or before the mailing date of a first Office Action on the merits of the above-identified application, or before the mailing

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date of a first Office Action after the filing of a request for continued examination under §1.114, no additional fee is required.

☐ In accordance with §1.129(a), this Information Disclosure Statement is being filed in connection with ☐ the first or ☐ second After Final Submission, therefore:

☐ Statement in Accordance with §1.97(e) (attached); or

☐ Please charge Deposit Account No. 10-0750/ /GSG the fee of \$180.00 as set forth in §1.17(p).

☐ In accordance with §1.97(c), this Information Disclosure Statement is being filed after the period set forth in §1.97(b) above but before the mailing date of either a Final Action under §1.113 or a Notice of Allowance under §1.311, or an action that otherwise closes prosecution and that it is accompanied by one of:

☐ Statement in Accordance with §1.97(e) (attached); or

☐ Please charge Deposit Account No. 10-0750/ the fee of \$180.00 as set forth in §1.17(p).

☐ In accordance with §1.97(d), this Information Disclosure Statement is being filed after the mailing date of either a Final Action under §1.113 or a Notice of Allowance under § 1.311 but before the payment of the Issue Fee. Applicant(s) hereby petition(s) for consideration of this Information Disclosure Statement. Included are: Statement in Accordance with §1.97(e) as set forth below and the fee of \$180.00 as set forth in §1.17(p).

☐ Copies of each of the references listed on the attached Form PTO-1449 are enclosed herewith.

☒ Copies of references listed on the attached Form PTO-1449 are enclosed herewith EXCEPT THAT:

☒ Copies of references listed on the attached PTO Form 1449 were previously cited by or submitted to the Patent and Trademark Office in prior application. US Serial No. 10/213,638 filed August 7, 2002 to which this application claims priority.

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☐ In view of the voluminous nature of references [list as appropriate], and the likelihood that these references are available to the Examiner, copies are not enclosed herewith.

☐ If any of the foregoing publications are not available to the Examiner, Applicant will endeavor to supply copies at the Examiner's request.

☐ There are no listed references which are not in the English language.

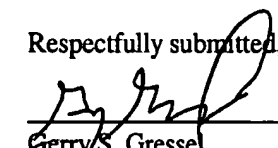
☐ The relevance of those listed references which are not in the English language is as follows:

☐ Attached are copies of search report(s) from corresponding patent application(s).

☐ Attached are the following non-published pending patent applications which may be deemed relevant.

Please charge any deficiency or credit any overpayment to Deposit Account No. 10-0750/END 897DIV2/GSG.

Respectfully submitted,



Gerry S. Gressel
Reg. No. 34,342
Attorney for Applicants

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(513) 337-3535
Dated: December 12, 2003



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Substitute for form 1449A/PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (use as many sheets as necessary)	Application Number	
	Filing Date	December 12, 2003
	First Named Inventor	Seth A. Foerster et al.
	Group Art Unit	
	Examiner Name	
	Attorney Docket Number	END 897 DIV2

Sheet 1 of 7

U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear
		Kind Code ²	Number (if known)			
		RE	34,936	Campbell et al.	5/9/95	ALL
			3,120,230	Skold	10/24/60	ALL
			3,945,375	Banko	3/23/76	ALL
			3,958,576	Komlya	5/25/76	ALL
			3,996,935	Banko	12/14/76	ALL
			4,080,959	Leveen	3/28/78	ALL
			4,103,692	Baier et al.	8/1/78	ALL
			4,210,146	Banko	7/1/80	ALL
			4,250,892	Dolhay et al.	2/17/81	ALL
			4,320,761	Haddad	3/23/82	ALL
			4,583,538	Onik et al.	4/22/86	ALL
			4,649,151	Dougherty et al.	3/10/87	ALL
			4,699,154	Lindgren	10/13/87	ALL
			4,682,606	DeCaprio	7/28/87	ALL
			4,693,237	Hoffman et al.	9/15/87	ALL
			4,733,664	Kirsch et al.	3/29/88	ALL
			4,832,685	Haines	5/23/89	ALL
			4,853,210	Kass	8/1/89	ALL
			4,881,551	Taylor	11/21/89	ALL
			4,907,599	Taylor	3/13/90	ALL
			4,909,250	Smith	3/20/90	ALL
			4,929,240	Kirsch et al.	5/29/90	ALL
			4,935,005	Haines	6/19/90	ALL
			4,944,308	Akerfeldt	7/31/90	ALL
			4,994,069	Ritchart et al.	2/19/91	ALL
			4,995,877	Ams et al.	2/26/91	ALL
			5,018,530	Rank et al.	5/28/91	ALL
			5,108,407	Gerenia et al.	4/28/92	ALL
Examiner Signature				Date Considered		

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	Filing Date	December 12, 2003
	First Named Inventor	Seth A. Foerster et al.
	Group Art Unit	
	Examiner Name	
	Attorney Docket Number	END 897 DIV2

U.S. PATENT DOCUMENTS

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		Number	Kind Code ² (if known)			
		5,025,797		Baran	6/25/91	ALL
		5,108,407		Gerenla et al.	4/28/92	ALL
		5,112,299		Pascaloff	5/12/92	ALL
		5,125,413		Baran	6/30/92	ALL
		5,127,916		Spencer et al.	7/1/92	ALL
		5,133,661		Euvrard	7/28/92	ALL
		5,147,307		Gluck	9/15/92	ALL
		5,156,609		Nakao et al.	10/20/92	ALL
		5,188,111		Yates et al.	2/23/93	ALL
		5,192,270		Carswell, Jr.	3/9/93	ALL
		5,192,292		Cezana et al.	3/9/93	ALL
		5,195,540		Shiber	3/23/92	ALL
		5,197,482		Rank et al.	3/30/93	ALL
		5,201,314		Bosley et al.	4/13/93	ALL

FOREIGN PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	Foreign Patent Document			Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear	T ⁶
		Office ³	Number ⁴	Kind Code ⁵				
		EPO	0 146 699	A1	Bahler et al.	7/3/85	ALL	
		EPO	0 293 605	B1	Herms et al.	11.08.93	ALL	
Examiner Signature					Date Considered			

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	Filing Date	December 12, 2003
	First Named Inventor	Seth A. Foerster et al.
	Group Art Unit	
	Examiner Name	
	Attorney Docket Number	END 897 DIV2

U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear
		Number	Kind Code ² (if known)			
		5,209,232		Levene	5/11/93	ALL
		5,217,478		Rexroth	6/8/93	ALL
		5,221,269		Miller et al.	6/22/93	ALL
		5,226,911		Chee et al.	7/13/93	ALL
		5,234,426		Rank et al.	8/10/93	ALL
		5,242,456		Nash et al.	7/7/93	ALL
		5,275,609		Pingleton et al.	1/4/94	ALL
		5,280,457		Figueroa et al.	1/18/94	ALL
		5,329,635		Smith	6/14/94	ALL
		5,342,283		Good	8/30/94	ALL
		5,364,406		Sewell, Jr.	11/15/94	ALL
		5,400,798		Baran	3/28/95	ALL
		5,403,276		Schechter et al.	4/4/95	ALL
		4,103,690		Harris	8/1/78	ALL
		5,024,727		Campbell et al.	8/18/91	ALL

FOREIGN PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	Foreign Patent Document			Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear	T ⁶
		Office ³ Kind Code ⁵	Number ⁴					
		EPO	0 350 043	B1	Palestrant et al.	19.08.92	ALL	
		EPO	0 481 685	A1	Miller et al.	22.04.92	ALL	
		PCT	90/15576	A1	Rank et al.	27.12.90	ALL	
		PCT	93/19803	A1	Heath et al.	14/10/93	ALL	
		GB	2 132 091	A	Norton et al.	7/4/84	ALL	
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**INFORMATION DISCLOSURE
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Sheet 4 of 7

Application Number

Filing Date

First Named Inventor

Group Art Unit

Examiner Name

Attorney Docket Number

12-12-2003

S. Foerster et al.

END 897 DIV2

U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear
		Number	Kind Code ² (if known)			
		4,197,846		Bucalo	04/15/80	ALL
		4,247,406		Widder et al.	01/27/81	ALL
		4,718,897		Elves	01-12-1988	ALL
		4,787,391		Eleftheriades	11-29-1988	ALL
		5,108,421		Fowler	04-28-1992	ALL
		5,122,147		Sewell	06-16-1992	ALL
		5,201,314		Bosley et al.	04-13-1993	ALL
		5,718,237		Haaga	02-17-1998	ALL
		5,873,904		Ragheb et al.	02-23-1999	ALL
		5,879,357		Heaton et al.	03-09-1999	ALL
		6,161,034		Burbank et al.	12-12-2000	ALL
		6,270,464		Fulton et al.	08-07-2001	ALL
		6,347,241		Burbank et al.	02-12-2002	ALL
		6,356,782		Sirimanne et al.	03-12-2002	ALL
		2001/0023322	A1	Esposito et al.	09-20-2001	ALL

FOREIGN PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	Foreign Patent Document			Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear	T ⁶
		Office ³	Number ⁴	Kind Code ⁵				
		WO	00/24320	A1	Esposito et al.	05-04-2000	ALL	
		JP	9-66063	A	Koken Co., LTD (Translation)	03-11-1997	ALL	

OTHER PRIOR ART - NON PATENT LITERATURE DOCUMENTS

Examiner's Initials [*]	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T ²
		LEE and KNOCHEL; Technical Developments and Instrumentation: Air as an Ultrasound Contrast Marker for Accurate Determination of Needle Placement; Radiology 143, June 1982; pp 787-788	
		SULLIVAN; Perspective: Needle Core Biopsy of Mammographic Lesions; AJR vol 162, March 1994 (received 8/20/1993) pp 601-608.	
		YANDOW and MATALLANA; Gas Contrast Guided Needle Biopsy of the Head of the Pancreas; Radiology vol. 137, November 1980; pp 643 - 644.	
		LEE et al.; Air as a Contrast Marker for Ultrasound-Guided Fetal Transfusions; Radiology, vol 138, Feb. 1981, pp 490-491.	
Examiner Signature		Date Considered	

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Sheet 5 of 7

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Application Number

Filing Date

First Named Inventor

Group Art Unit

Examiner Name

Attorney Docket Number

12-12-2003

S. Foerster et al.

END 897.DIV2

U.S. PATENT DOCUMENTS

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		Number	Kind Code ² (if known)			
		4,086,914		Moore, Edwin Bailey	05/78	ALL
		4,402,308		Scott, Walter P.	09/83	ALL
		4,709,703		Lazarow et al.	12/87	ALL
		4,871,094		Fujioaka et al.	12/87	ALL
		5,358,474		Kaldany, Antoine	10/94	ALL
		5,487,392		Haaga, John R.	01/96	ALL
		5,526,822		Burbank et al.	06/96	ALL
		5,538,010		Darr et al.	07/96	ALL
		5,562,613		Kaldany, Antoine	10/96	ALL
		5,649,547		Ritchart et al.	07/97	ALL
		6,056,700		Burney et al.	03/99	ALL
		5,002,548		Campbell et al.	03/26/91	ALL
		5,242,457		Alcopov et al.	09/93	ALL
		5,413,584		Schulze	05/95	ALL
		5,496,314		Eggers	03/96	ALL
		5,681,262		Isse	10/97	ALL
		6,228,055	B1	Foerster et al.	05/08/01	ALL

FOREIGN PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	Foreign Patent Document			Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear	T ⁴
		Office ³	Number ⁴	Kind Code ⁵				
							ALL	

Examiner Signature	Date Considered

OTHER PRIOR ART - NON PATENT LITERATURE DOCUMENTS

Examiner's Initials ⁶	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T ⁴
		S.S. Kramer et al.; "Permanent Radiopaque Marker Technique for the Study of Pharyngeal Swallowing in Dogs"; Dysphagia vol. pp. 183-187 (1987).	
		Homer et al.; "The Geographic Cluster of Microcalcifications of the Breast" Surgery, Gynecology & Obstetrics, DGC (1985).	
		Finan et al.; "Intravaginal Radiotherapy for Early Stage Vaginal Cancer"; The Journal of Reproductive Medicine, Vol. 38, No. 3 Mar. 1993	

⁶EXAMINER: Initial if reference considered, whether or not cited; is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

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U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear
		Number	Kind Code ² (if known)			
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		Office ³	Number ⁴	Kind Code ⁵				
		WO	00/78228A1		CHIN SING et al.	28-12-2000	ALL	
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OTHER PRIOR ART - NON PATENT LITERATURE DOCUMENTS

Examiner's Initials ⁶	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T ²
		PARKER and KLAUS; From the RSNA Refresher Courses: Performing a Breast Biopsy With Directional, Vacuum-assisted Biopsy Instrument; Radiographics Vol 17/5, 1997, pp 1233-1253	
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